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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,083	11/17/2003	Sidney Diamond	57535.010021	3290

7590 08/04/2006

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EXAMINER

STULII, VERA

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 08/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/715,083	Applicant(s) DIAMOND ET AL.	
	Examiner Vera Stulii	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/05/2004</u> . | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the upper section of the base that tapers upwardly to a smaller size (Claim 11, lines 1-2) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to “pre-selected size and configuration” (Claim 1, lines 4,8) and “pre-determined size and configuration” (Claim 1, lines 9,10,16), it is not clear how “pre-selected” is different from “pre-determined”? It is not clear what the phrase “the pre-selected size and configuration fitting into, and passing through the opening of the pre-determined size and configuration” (Claim 1, lines 8,9) means. The “pre-selected size and configuration” of what? The phrase “the opening” (Claim1, line 9) is unclear. Is it lower end opening or upper end opening? It is also not clear what is meant by “the casing having an opening of pre-determined size and configuration extending from the opening in the lower end to the opening in the upper end” (Claim 1, line 10-12). Does it simply mean that the casing is hollow? Regarding to phrase “ a plurality of individually consumable candy modules carried in the casing” (Claim1, line 13), it is not clear how exactly candy modules are carried in the casing. Are they stacked? What exactly the candy module consists of? Is the whole candy module consumable or just a candy component? If the candy module is consumable, does it mean that the candy module base is edible? In the phrase “ the base having an outer periphery generally fitting into, and passing through an opening of the pre-determined size and configuration of the

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lower end, and the casing" (Claim 1, lines 15-17), it is not clear what does it mean "generally fitting into" (Claim 1, line 16). Does it mean that the candy module base is not fitting through the upper end opening? It is also not clear if the shape of the base is the same as the shape of lower end, upper end, and extending opening. It is also not clear if the openings are of the same shape. Do openings and the base have the same size? If not, how are they different? It is not clear what "fixed overall size means" (Claim 1, line 18). It is also not clear what does it mean "not fitting entirely" (Claim 1, line 18).

It is also not clear what is meant by "an anchoring component" (Claim 2, line 2). It also not clear how exactly anchoring component "is integrally formed as a part of the base" (Claim 3, lines 1-2). Regarding the phrase "a cavity extends upwardly from the bottom of the lower section of the base into the base", it is not clear what exactly the cavity extends "into the base".

It is not shown using the base support of the consumed piece of candy in the casing to expose the uppermost one for consumption.

The art rejection has not been made, since none of the prior art teaches stacking a series of smaller pieces of candy and using the base support of the consumed piece of candy to move the other pieces of candy in the holder to expose the uppermost one for consumption.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Wu (US 6,145,515) discloses multi-color lipstick case.

Silverstein et al. (US 6,136,352) discloses sanitary novelty candy product.

Staar (US 5,069,232) discloses disposable make-up systems.

Sheffler et al. discloses lipstick package with dispensing compartments.

Bengis (6,450,179) disclose cosmetic container with interchangeable attachments.

Menolasino et al. (3,032,179) disclose disk dispenser package.

Hicks disclose incremental butter dispenser.

Mueller (US 5,111,973) disclose discharge device for dispensing container.

Cage (US 2,969,902) disclose unitary sectionable container.

Bitton et al. (US 6,926,166) disclose device for combining candy dispenser and health and beauty aid dispensers.

Clementson (US 2,953,142) discloses lipstick assembly.

Hunsberger (US 5,881,742) disclose multi-purpose cosmetic applicator.

Coleman et al. (US 6,328,163) disclose morphing candy holding device.

McMurrey (US 6,568,529) discloses nestable cosmetic package assembly.

Giulliano et al. (US 5,440,976) discloses adjustable dispensing stirrer for soluble sweeteners.

Coleman et al. (US 6,319,085) discloses rocket pop.

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Rudd (US 2,414,245) discloses stick arrangement.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vera Stulii whose telephone number is (571) 272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

VS

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PRIMARY EXAMINER
Group 1700